

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

MARVIN VAN MAANEN
Facility #57034

Lyon County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2014-AFO- 09

TO: Marvin Van Maanen
3110 230th Street
Doon, Iowa 51235

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Marvin Van Maanen for the purpose of resolving violations resulting from a manure discharge from Mr. Van Maanen's open feedlot that resulted in water quality violations and a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Cindy Martens, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand Gateway North, Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative

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penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. Marvin Van Maneen owns and operates an open cattle lot located at 3110 230th Street, Doon, Iowa (SW 1/4 of section 9, Garfield Township, Lyon County). The facility has a capacity of 800 head of cattle, with a head count of 600 at the time of DNR Field Office 3's investigation in September 2013.

2. On September 2, 2013 Cindy Martens, DNR Field Office 3 environmental specialist senior, received a telephone call from DNR Conservation Officer Greg Harson who reported a fish kill on the Little Rock River east of Doon, Iowa. On August 31, 2013, the area received two inches of rain in a short amount of time.

3. Ms. Martens began the investigation during the afternoon of September 2, 2013. Ms. Martens arrived at the Highway 75 Bridge between sections 28 and 29, Garfield Township, Lyon County, known as Boersma Tract. She observed dead fish at this location. Ms. Martens collected laboratory samples from this location. The laboratory sample results indicated the following: E. coli – 24,000 [MPN]/100 mL; Ammonia Nitrogen – 0.21 mg/L; Chloride – 22 mg/L; BOD – 5 mg/L; and Total Suspended Solids – 60 mg/L. The elevated levels of E. Coli are indicative of manure. The water was dark and murky. Ms. Martens proceeded upstream to the next crossing at Harrison Avenue to the east and north between sections 21 and 22, Garfield Township. Ms. Martens did not see any dead fish at this location and the field test did not indicate the presence of ammonia. The laboratory sample results indicated the following: E.coli – 140 [MPN]/100 mL; Ammonia Nitrogen – 0.35 mg/L; Chloride – 21 mg/L; BOD - <2 mg/L; and Total Suspended Solids – 15 mg/L. The sample results indicated normal results of a clean river. From the sampling at the two locations it was apparent to Ms. Martens that the pollutant was entering the river somewhere between the two sample points. After reviewing the stream and plat maps it was evident that the only areas feeding the impacted portion of the river originated from the north and northwest.

4. Ms. Martens proceeded north to James Koedam's facility. Ms. Martens observed runoff from the facility's lots in a southeast flow pattern, flowing to the Little Rock River near Boersma Tract.

5. Following the investigation at Mr. Koedam's facility, Ms. Martens proceeded to Marvin Van Maanen's open feedlot facility, located northeast of Mr. Koedam's facility. Ms. Martens met with Mr. Van Maanen who informed Ms. Martens that he had recently eliminated the most southwestern pen for cattle and installed a concrete wall, settling picket fence and a cement collection sump pit. The sump pit has a hose with small holes that allows liquid to drain to the pasture grass.

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Mr. Van Maanen did not believe that his facility contributed to the manure release and the fish kill. Ms. Martens observed that the holding pit was not large enough to contain the runoff or the pump did not operate correctly because of electricity failure, allowing manure to be released. Manure runoff from the feedlot escaped the cement containment wall and flowed around the east end and into the ditch to the south. The south ditch showed several areas of washout that allowed manure laden water to flow to the south through the road culvert and southward through the field, into the unnamed tributary and into the Little Rock River near the Boersma Tract. Ms. Martens collected a laboratory sample on the south side of the facility from the runoff that flowed through the culvert. The runoff had a strong manure odor. The laboratory sample results indicated the following: E.coli – >2,400,000 [MPN]/100 mL; Ammonia Nitrogen – 59 mg/L; Chloride – 220 mg/L; BOD - 130 mg/L; and Total Suspended Solids – 60 mg/L.

6. Mike Hawkins, with the DNR Fisheries Bureau, conducted the fish kill investigation. The source of the fish kill originated from feedlot runoff from Mr. Koedam's and Mr. Van Maanen's facilities. The fish kill extended approximately 3,058 yards in the Little Rock River; the Fisheries Bureau counted all of the dead fish in the kill area. It was determined that 522 fish were killed with a value of \$2,349.35. The Fisheries investigative costs equaled \$1,201.70. The total restitution and investigative costs equaled \$3,551.05.

7. On October 9, 2013, DNR issued a Notice of Violation letter to Mr. Van Maanen for the violations discovered in September 2013. The letter required that Mr. Van Maanen submit a Plan of Action to DNR Field Office 3 detailing how the feedlot runoff would be controlled at the facility. The letter acknowledged that Mr. Van Maanen had started improvements at the facility, but further steps would be needed to ensure the pump and sump area could handle a heavy rainfall. The letter stated that the plan also needed a back-up plan if the electricity failed. On November 14, 2013, Mr. Van Maanen emailed Ms. Martens informing her that the improvements had been made at the facility and that the Iowa State University Extension Office had approved of the improvements. The improvements included the adjustments to the pump system by enlarging the drain hole to accommodate more water. The facility raised the berms around the east side of the cement wall by adding 12 inches of dirt. The facility also added two 2x12 boards on top of each other around the pump.

8. DNR Field Office 3 previously visited Mr. Van Maanen's facility. In March 2012, Brandon Miner, DNR Field Office 3 environmental specialist, visited Mr. Van Maanen's facility to discuss the facility's manure control system. During the visit, Mr. Miner noted that manure runoff from the facility flowed into the road ditch and into a culvert under the road way. On March 29, 2012, DNR sent a letter to Mr. Van Maanen stating that the road ditch was considered a man-made conveyance. DNR informed Mr. Van Maanen that the facility is considered a medium CAFO because it had between 300 and 1,000 animal units and that runoff from the facility

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discharged to a creek through a man-made conveyance. The letter required Mr. Van Maanen to do one of three things: 1) apply for a NPDES permit; 2) eliminate the man-made conveyance by redirecting the runoff; or 3) reduce the number of animals at the facility below 300. In December 2012, Mr. Miner returned to the facility and noted that the channelized area had been eliminated, but it still appeared that runoff could channelize in the field and reach the creek. On December 20, 2012, DNR sent a letter to Mr. Van Maanen stating that while he had made some improvements that more had to be done at the facility. In April 2013, Mr. Miner conducted a follow-up visit to the facility. During this visit, Mr. Miner noted that while some improvements had been made that runoff had made it to the creek. On April 25, 2013, DNR sent a letter to Mr. Van Maanen stating that he must submit a Plan of Action to DNR Field Office 3 and that the permanent measures must be completed by December 31, 2013. On November 14, 2013, Mr. Van Maanen submitted a Plan of Action providing the permanent measures taken at the facility to prevent future discharges.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 3's investigation it was determined that open feedlot manure from Mr. Van Maanen's facility was discharged into Little Rock River. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.101 states that the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to a discharge to a water of the state. During DNR Field Office 3's investigation manure solids were observed in the river. The above facts indicate a violation of this provision.

4. 567 IAC 65.101(9) and 567 IAC chapter 131 require that a person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release shall notify the DNR of the occurrence of the release as soon as possible but no later than six hours after the onset or discovery of the release. Manure solids and liquids from Mr. Van Maanen's facility were discharged into Little Rock River and no notification was received by the DNR. The above mentioned facts indicate a violation of this provision.

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5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants and a fish kill was confirmed. Additionally, DNR Field Office 3 personnel observed discolored water as well as a manure odor to the water. The above mentioned facts indicate violations of the general water quality criteria.

6. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The National Resource Commission has adopted 571 IAC chapter 113. 571 IAC chapter 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The manure discharge from Mr. Van Maanen's facility contributed to a fish kill in the Little Rock River.

V. ORDER

THEREFORE, the DNR orders and Marvin Van Maanen agrees to do the following:

1. Mr. Van Maanen must monitor his facility to ensure that runoff from the facility does not reach the creek;
2. Mr. Van Maanen shall pay half of fish restitution in the amount of \$1,175.00 and investigative costs in the amount of \$600.85 within 30 days of the date the Director signs this administrative consent order; and
3. Mr. Van Maanen shall pay an administrative penalty in the amount of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

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Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Van Maanen gained an economic benefit by failing to properly contain the manure from his facility. Mr. Van Maanen avoided the costs associated with not properly maintaining the manure at his facility. Additionally, Mr. Van Maanen has saved money by delaying the costs of not installing proper manure controls. Based on the above facts, the economic benefit Mr. Van Maanen received was at least \$1,500.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 3 documented a manure discharge that led to documented water quality violations and a fish kill. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Marvin Van Maanen has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. Mr. Van Maanen was informed on at least two occasions previous to this discharge that more controls were necessary. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Marvin Van Maanen. For that reason Marvin Van Maanen waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an

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administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 24th day of
March, 2014.

Marvin Van Maanen
MARVIN VAN MAANEN

Dated this 13 day of
March, 2014.

Facility #57034; Kelli Book, DNR Field Office 3, EPA, VIII.D.1.B and VIII.D.3.a

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